



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2014-0987]

RIN 1625-AA11

Regulated Navigation Area; Herbert C. Bonner Bridge, Oregon
Inlet, NC

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a Regulated Navigation Area (RNA) on the navigable waters of Oregon Inlet, NC surrounding the Herbert C. Bonner Bridge. This RNA will allow the Coast Guard to enforce vessel traffic restrictions within the RNA when necessary to safeguard people and vessels from the hazards associated with potential catastrophic structural damage that could occur due to vessel allisions with the bridge.

DATES: This rule is effective on [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: Comments received from the public, as well as documents mentioned in this preamble are part of Docket Number USCG-2014-0987. To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>,

type the docket number in the "SEARCH" box and click "SEARCH."
Click on "Open Docket Folder" on the line associated with this
rulemaking. You may also visit the Docket Management Facility
in Room W12-140 on the ground floor of the Department of
Transportation West Building, 1200 New Jersey Avenue SE,
Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through
Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this
rule, call or e-mail LT Derek Burrill, Waterways Management
Division Chief, U.S. Coast Guard Sector North Carolina,
telephone (910) 772-2230, email Derek.J.Burrill@uscg.mil.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

COTP	Captain of the Port
DHS	Department of Homeland Security
FR	Federal Register
RNA	Regulated Navigation Area

A. Regulatory Information

On December 17, 2014, we published an interim final rule
and request for comments entitled "Regulated Navigation Area;
Herbert C. Bonner Bridge, Oregon Inlet, North Carolina" in the
Federal Register (79 FR 75050). We received five comments coming
from two submitters on the Interim Final Rule. No public
meeting was requested, and none was held.

B. Background and Purpose

This rulemaking is authorized by 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; and DHS Delegation No. 0170.1. Under these authorities the Coast Guard may establish a RNA in defined water areas that are determined to have hazardous conditions and in which vessel traffic can be regulated in the interest of safety. The purpose of this RNA is to reduce the risk of a bridge strike resulting from a vessel transiting through alternative spans of the Herbert C. Bonner Bridge, which are not intended for navigation. In addition, this RNA will serve to ensure vessels transiting the area are restricted to those that may do so safely, and will not impose unnecessary risk of harm to themselves or other maritime traffic. A bridge strike to un-fendered or unprotected structural elements of the Bonner Bridge would introduce a clear and present danger to stability of the bridge, motorists, mariners, and indirect impacts on local businesses and residents of Hatteras Island, NC. A grounded vessel in this heavily trafficked waterway would also greatly increase the risk of a bridge strike by another vessel.

When shoaling is present in the vicinity of the navigation span, vessels attempt to transit through alternate spans. Transiting through alternate spans is hazardous. Mariners

transiting near and through the unprotected structural components increase the potential of a bridge strike; these spans do not have fenders or other mechanisms to protect the bridge from vessel strikes. Vessels that transit alternate bridge spans pose a risk to safe navigation as there are no advertised vertical and horizontal clearances for these areas.

The Coast Guard has also considered the 2006 North Carolina Department of Transportation (NC DOT) biennial bridge inspection in accordance with National Bridge Inspection Standards (NBIS) for the Herbert C. Bonner Bridge. This report takes into account the substructure and superstructure inspections along with analysis of the maritime navigational and motor vehicle concerns. The report noted weakened pile supports as a result of section loss and substructure erosion to the point of showing exposed rebar. Publically available information provided by NC DOT indicates that the Herbert C. Bonner Bridge has a very low sufficiency rating. The Herbert C. Bonner Bridge is the only vehicular access to Hatteras Island for residents, commercial vendors, and business owners transiting from Nags Head-Bodie Island to Hatteras Island. The Bonner Bridge is subject to heavy traffic volume, particularly during the summer tourist season. Risks to the lives of mariners, vehicle motorist and passengers, have been considered in the development of this rulemaking.

C. Discussion of Comments and Changes

The Coast Guard received a total of five comments coming from two submitters on the Interim Final Rule. No public meeting was requested, and none was held.

Economic Effects: Limiting Passage of Certain Vessels Pursuant to Enforcing the RNA

Two comments were received about the possible economic effects of the interim rule on small entities and local economies. Specifically, the comments expressed concern that the RNA if utilized would have significant negative impact on commercial and recreational mariners and the regional economy because alternate routes around Oregon Inlet are distant.

As noted in the Interim Final Rule, there are alternate routes for vessels bound for Oregon Inlet, North Carolina and inland waterfront communities, including Wanchese, NC. Those alternate routes include transiting through Beaufort Inlet or Chesapeake Bay and the Atlantic Intracoastal Waterway and Sounds of North Carolina. The distance from Oregon Inlet Lighted Whistle Buoy "OI" to Wanchese, North Carolina via Beaufort Inlet, the Atlantic Intracoastal Waterway and Pamlico Sound is approximately 190 nautical miles. The distance from Oregon Inlet Lighted Whistle Buoy "OI" to Wanchese, North Carolina via

Chesapeake Bay, the Atlantic Intracoastal Waterway and Albemarle Sound is approximately 200 nautical miles.

No change to the rule were made based on these comments because alternate access routes exist and should significant hazardous conditions be evident the potential risk of loss of life, damage to the bridge, and the impact on access to Hatteras Island outweighs the benefits of permitting navigation in the vicinity or under the Bonner Bridge. Additionally, the Coast Guard has and will continue to use all available resources to safely and efficiently monitor the conditions of the designated waters of this RNA to minimize impacts to the waterway users. Should the need arise for the Coast Guard to restrict vessel traffic in the RNA based on shoaling, hazardous conditions or severe weather conditions, these restrictions would be imposed for certain vessels who, in the discretion of the COTP, pose a safety risk to the bridge structure. Given this limited scope of restriction, any negative economic impact would be minimal and strongly outweighed by the associated safety concerns.

RNA Vessel Designation and Characteristics: Designation of Vessels Allowed to Transit through the RNA

One comment was received that the rule does not provide sufficient notice regarding what types of vessels will be

allowed to transit through the RNA when enforced. The comment acknowledged the Coast Guard authority to designate vessel characteristics of vessels which may navigate within the RNA but suggested that the RNA allow all vessels under 65 feet in length, with a draft of less than 6 feet and a tonnage under 50 tons to continue navigating in the vicinity of the RNA when being enforced.

The Coast Guard wants to impose the appropriate restrictions based on the conditions in the inlet. The Oregon Inlet waterway is constantly changing: Hurricanes and strong low pressure systems (e.g. Nor'easters) exacerbate tidal current and the seasonal fluctuations of the inlet's water depths. Also, frequent dredging and realignment of the approach channel east of the bridge has become routine. Publically available U.S. Army Corps of Engineers (USACE) hydrographic survey data over the past two years indicates shoaling to depths of less than 3 feet at mean low water within the approaches to the Herbert C. Bonner Bridge on a frequently occurring basis. Because many of these factors are uncontrollable, having the ability to impose variable restrictions dependent on conditions allows the Coast Guard to tailor the restrictions to vessels which pose the most significant risk and threat to the bridge while minimizing impacts on the commercial and recreational waterway users.

A change to the notification aspect of the rule was made

based on this comment. As noted in the NPRM the Coast Guard will notify the public of restrictions via Local Notice to Mariners, Broadcast Notice to Mariners and via other methods described in 33 CFR 165.7. Also, Coast Guard personnel may be on-scene to advise the public of enforcement of any restrictions on vessel navigation within the RNA. In 33 CFR 165.520(c)(3), a provision was added so that the Coast Guard will also notify the maritime community of any imposed RNA restrictions or impacts to navigation through the U.S. Coast Guard HOMEPORT Web site and Marine Safety Information Bulletins. Additionally, the Coast Guard will notify recognized commissions and/or committees appointed by the Dare County, North Carolina elected officials who represent commercial and recreational mariner interests in Oregon Inlet, North Carolina, when practicable, prior to imposing restrictions pursuant to enforcement of the RNA. The rule also allows the COTP or his/her designated representative to permit vessel access on a case-by-case basis should heavy vessel traffic be present.

Rule Making Process: Interim Final Rule Verse Notice of Proposed Rulemaking

One comment was received that stated the Coast Guard should not have issued an Interim Final Rule as broad and restrictive

as the Herbert C. Bonner Bridge RNA without first undertaking notice and comment procedures. The commenter felt that other Coast Guard RNA's were established using a notice and comment period and recommended replacing the Interim Final Rule with a temporary rule establishing a limited duration RNA and form a working group to determine what type of vessels and under what circumstances these vessels may navigate in Oregon Inlet.

No changes to the rule were based on these comments. The Coast Guard issued this interim final rule without prior notice and opportunity to comment before being enforceable pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are "impracticable, unnecessary, or contrary to the public interest." The Coast Guard maintains that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because immediate action is necessary to protect the maritime public who transit Oregon Inlet and motorist that use the Herbert C. Bonner Bridge. The potential dangers posed by vessel strikes to the Herbert C. Bonner Bridge resulting in catastrophic damage makes immediate action necessary to minimize the risk of potential loss of life, damage to the bridge, and the impact on access to Hatteras Island. The

shoaling in this area continues to worsen and the structural integrity of the bridge continues to deteriorate, which combine to create an unacceptable risk to the public that justified the issuance of an interim final rule. Accordingly, waiting for a comment period to run would be contrary to the public interest of protecting life, property and a vital motorist transit.

Additionally, the Interim Final Rule was issued with a 30 day request for comments to solicit and consider information in issuing a Final Rule from those entities that may be impacted by this rule.

Notification Process: Publicizing Enforcement of the RNA

One comment was received stating notification of the RNA requirements when enforced is critical due to the amount vessel traffic which utilizes the inlet, especially in the summer months.

One change to the rule was made based on this comment.

As noted in the NPRM the Coast Guard will notify the public of restrictions via Local Notice to Mariners, Broadcast Notice to Mariners and via other methods described in 33 CFR 165.7. Also, Coast Guard personnel may be on-scene to advise the public of enforcement of any restrictions on vessel navigation within the RNA. In 33 CFR 165.520(c)(3), a provision was added so that the Coast Guard will also notify the maritime community of any

imposed RNA restrictions or impacts to navigation through the U.S. Coast Guard HOMEPORT Web site and Marine Safety Information Bulletins. Additionally, the Coast Guard will notify recognized commissions and/or committees appointed by the Dare County, North Carolina elected officials who represent commercial and recreational mariner interests in Oregon Inlet, North Carolina, when practicable, prior to imposing restrictions pursuant to enforcement of the RNA. The rule also allows the COTP or his/her designated representative to permit vessel access on a case-by-case basis should heavy vessel traffic be present.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

This regulation will restrict access within the Regulated Navigation Area at Oregon Inlet and the Herbert C. Bonner Bridge, the effect of this rule will not be significant because: (i) the Coast Guard will make extensive notifications of the regulated area to the maritime public via maritime advisories so mariners can adjust their plans accordingly; (ii) these restrictions will only be imposed based on the extent of shoaling, hazardous conditions and severe weather in the area, and will only be imposed on vessels that exceed certain size restrictions; and (iii) vessels impacted by this regulation may request permission from Commander Coast Guard Sector North Carolina / COTP North Carolina to transit the regulated area on a case by case basis.

2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The regulation may have an economic impact on vessels that normally transit Oregon Inlet. These small entities are primarily commercial and recreational fishing vessels. Operation of vessels of certain characteristics in this RNA will be prohibited from transiting

Oregon Inlet by the Captain of the Port (COTP) or designated representative when shoaling in the vicinity of the Herbert C. Bonner Bridge creates unsafe condition for vessels. The potential risk of loss of life, damage to the bridge, and the impact on access to Hatteras Island outweighs the benefits of permitting navigation in the vicinity or under the Bonner Bridge.

Although the Oregon Inlet area is used by many small entities, including commercial and recreational fishing businesses, alternate routes are available to vessels. The Coast Guard will make extensive notifications of the regulated navigation area to the maritime public via maritime advisories so mariners can adjust their plans accordingly; and in extreme circumstances, vessels prohibited from entry may request permission from Commander Coast Guard Sector North Carolina / COTP North Carolina to transit the RNA on a case by case basis. Moreover the restrictions imposed will be based on the extent of shoaling, hazardous conditions and severe weather in the area, and limited only to vessels that exceed certain size restrictions.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the

rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We

have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children from Environmental Health Risks

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a "significant energy action" under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.1D, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a Regulated Navigation Area. This rule is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant Instruction. Preliminary environmental analysis checklist supporting this determination and Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures and Waterways.

For the reasons discussed in the preamble, the interim rule amending 33 CFR part 165 published at 79 FR 75050 on December 17, 2014 is adopted as a final rule, with changes, as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 46 U.S.C. Chapter 701, 3306, 3703; 50 U.S.C. 191, 195; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Pub. L. 107-295, 116 Stat. 2064; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 165.520 to read as follows:

§ 165.520 Regulated Navigation Area; Herbert C. Bonner Bridge, Oregon Inlet, NC.

(a) Regulated area. The following area is a Regulated Navigation Area (RNA): All navigable waters of Oregon Inlet, North Carolina within 100 yards under or surrounding any portion of the Herbert C. Bonner Bridge.

(b) Definitions. As used in this section:

(1) Captain of the Port means the Captain of the Port (COTP) North Carolina.

(2) Captain of the Port Representative means any Coast Guard

commissioned, warrant, or petty officer who has been authorized by the Captain of the Port North Carolina to act as a designated representative of the COTP.

(3) Hazardous Condition means any condition that may adversely affect the safety of any vessel, bridge, structure, or shore area or the environmental quality of any port, harbor, or navigable waterway of the United States, as defined in 33 CFR 160.204.

(4) Official patrol vessel means any Coast Guard, Coast Guard Auxiliary, state, or local law enforcement vessel(s) assigned and authorized by COTP North Carolina.

(c) Regulations. (1) The general regulations governing Regulated Navigation Areas found in 33 CFR 165.10, 165.11, and 165.13, including the Regulated Navigation Area described in paragraph (a) of this section and the following regulations, apply.

(2) Operation of vessels of certain characteristics in this RNA will be prohibited by the Captain of the Port (COTP) or designated representative in order to safeguard people and vessels from the hazards associated with shoaling and the Herbert C. Bonner Bridge from the potential catastrophic structural damage that could occur from a vessel bridge strike. The COTP or designated representative will evaluate local marine environmental conditions prior to issuing restrictions regarding

vessel navigation. Factors that will be considered include, but are not limited to: hydrographic survey data, vessel characteristics such as displacement, tonnage, length and draft, current weather conditions including visibility, wind, sea state, and tidal currents.

(3) The Coast Guard will notify the public of restrictions via Local Notice to Mariners, Broadcast Notice to Mariners, electronic mail, U.S. Coast Guard HOMEPORT Web site, Marine Safety Information Bulletins and via other methods described in 33 CFR 165.7. Additionally, the Coast Guard will notify recognized commissions and/or committees appointed by the Dare County, North Carolina elected officials who represent commercial and recreational mariner interests in Oregon Inlet, North Carolina, when practicable, prior to imposing restrictions pursuant to enforcement of the RNA. Coast Guard personnel may be on-scene to advise the public of enforcement of any restrictions on vessel navigation within the RNA.

(4) In accordance with the general regulations, entry into, anchoring, or movement within the RNA, during periods of enforcement, is prohibited unless authorized by the Captain of the Port (COTP) or the COTP's on-scene designated representative. The ``on-scene designated representative'' of the COTP is any Coast Guard commissioned, warrant or petty officer who has been designated by the COTP to act on the COTP's

behalf. The on-scene representative may be on a Coast Guard vessel; State agency vessel, or other designated craft; or may be on shore and will communicate with vessels via VHF-FM marine band radio or loudhailer. Members of the Coast Guard Auxiliary may be present to assist COTP representatives with notification of vessel operators regarding the contents of this regulation.

(5) Any deviation from paragraph (c)(4) of this section due to extreme circumstances must be authorized by the Coast Guard District Commander, the Captain of the Port (COTP) or the COTP's designated representative. Vessels granted permission to transit the RNA must do so in accordance with the directions provided by the COTP or COTP representative to that vessel. To request permission to transit the regulated navigation area, the COTP or COTP representative can be contacted at Coast Guard Sector North Carolina, telephone number (910) 343-3880, or on VHF-FM marine band radio channel 13 (165.65MHz) or channel 16 (156.8 MHz). During periods of enforcement, all persons and vessels given permission to enter or transit within the RNA must comply with the instructions of the COTP or designated representative. Upon being hailed by an official patrol vessel by siren, radio, flashing-light, or other means, the operator of a vessel must proceed as directed.

(d) Enforcement. The Coast Guard may be assisted in the patrol and enforcement of the Regulated Navigation Area by other

Federal, State, and local agencies. The COTP may impose additional requirements within the RNA due to unforeseen changes to shoaling of Oregon Inlet or structural integrity of the Herbert C. Bonner Bridge.

(e) Notification. The Coast Guard will rely on the methods described in 33 CFR 165.7 and paragraph (c)(3) of this section to notify the public of the date, time and duration of any closure of the RNA. Violations of this RNA may be reported to the COTP at (910) 343-3880 or on VHF-FM channel 16.

Dated: October 9, 2015

STEPHEN P. METRUCK
Rear Admiral, U.S. Coast Guard
Commander, Fifth Coast Guard District
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